

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

IN RE:	)	Case No. 4:06CV3279
	)	Bk Case No. 06-41014
THOMAS ALLEN CALHOON,	)	
	)	MEMORANDUM AND ORDER
Debtor.	)	

The debtor has filed a motion to reconsider the court's prior order dismissing the debtor's bankruptcy appeal for failure to pay the filing fee. Filing No. 11. The debtor's Chapter 13 bankruptcy petition was dismissed on November 8, 2006 for failure to make payments. See Filing No. 8.

The debtor filed his notice of bankruptcy appeal on November 24, 2006, (Filing No. 1), along with a motion requesting waiver of the filing fee for appeal. Filing No. 2. The debtor's application for a waiver of the filing fee was denied because "Debtor's schedules show net monthly disposable income of \$406.00. He can pay the appellate filing fee." Filing No. 3.

The debtor did not pay the filing fee, but did file an election to have his appeal heard by the district court and a designation of the record on appeal with statement of issues. Filing No. 5. The debtor was notified on November 27, 2006 that his appeal was deficient for failure to pay the filing fee, and that the appeal was submitted to the district court for determination of any necessary action. Filing No. 7.

By order dated April 27, 2007, the debtor's appeal was dismissed for failure to pay the fee for docketing a bankruptcy appeal. Filing No. 10. The debtor filed his motion to reconsider on May 7, 2007, (Filing No. 11), "for the reason—ability to pay filing No. 3 was and has changed." Filing No. 11, p. 1. He states, "I will fill out the forms you need so that I can waive my filing fee for the appeal I filed, or I will borrow the 250.00 for the fee." Filing No. 11, p. 3. The debtor has not explained why these steps were not taken at any time between November 24, 2006 and the dismissal of this appeal on April 27, 2007, or why he failed to pay the appellate fee in November 2006 when he had net monthly disposable income of \$406.00 (and apparently before his circumstances changed). He has provided no specific financial information in support of his motion to reconsider the dismissal of his bankruptcy appeal.

The debtor's bankruptcy appeal was properly dismissed. Amick v. Ashlock, 113 Fed. Appx. 191, \*192, 2004 WL 2603590, \*\*1 (8<sup>th</sup> Cir. 2004)(affirming dismissal of a complaint for failure to pay the filing fee where the plaintiff never explained why he was unable to pay the fee as ordered). The debtor has offered no sufficient evidence or explanation justifying reconsideration and reversal of that decision.

IT IS ORDERED:

The debtor's motion to reconsider the dismissal of his bankruptcy appeal, Filing No. 11, is denied.

DATED this 20<sup>th</sup> day of July, 2007.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge